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12 UNITED STATES DISTRICT COURT
13 FOR THE CENTRAL DISTRICT OF CALIFORNIA
14

15 AMERICAN CIVIL LIBERTIES
16 UNION FOUNDATION OF
SOUTHERN CALIFORNIA,

17 Plaintiff,

18 v.

19 UNITED STATES IMMIGRATION
20 AND CUSTOMS ENFORCEMENT, et
al.,

21 Defendants.
22
23

No. 2:22-cv-04760-SHK

**DEFENDANT U.S. IMMIGRATION
AND CUSTOMS ENFORCEMENT'S
RESPONSE TO STATEMENT OF
GENUINE DISPUTES OF MATERIAL
FACT**

Honorable Shashi H. Kewalramani
United States Magistrate Judge

Pursuant to Local Rule 56-4, Defendant ICE submits this Response to Statement of Genuine Disputes of Material Fact.

No.	MOVING PARTY'S UNCONTROVERTED FACT & SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE TO CITED FACT AND SUPPORTING EVIDENCE
1	<p>Plaintiff's FOIA Request sought "any and all records that were prepared, received, transmitted, collected, and/or maintained by ICE or DHS that describe, refer, or relate to the release of hospitalized detainees from custody before their death; any records related to release of individual detainees once hospitalized; and any records related to the death of such detainees after their release from custody, including any communications or investigations" dating from January 1, 2016.</p> <p><i>Evidence:</i> Dkt. 24 (First Amended Complaint), ¶ 35 & Ex. A thereto (Dkt. 24-1 at 2-14)</p>	<p>1. Disputed. Plaintiff's request contains the quoted language, but the specific records sought are spelled out in significant detail, which is not included in this fact. ECF No. 1-1 (Plaintiff's FOIA Request), 5-7. Additionally, Plaintiff's request seeks documents "from January 1, 2016 to the present," "[u]nless otherwise noted." <i>Id.</i> at 4. Only Parts 2-9 of Plaintiff's request are limited to this date range. Part 1 is not. Part 1 specifies that the request is made "without limitation to date." <i>Id.</i> at 5.</p> <p><i>Evidence:</i> ECF No. 1-1, 4-7.</p>
<p>1. Moving Party's Response</p> <p>The above represented a summary of the FOIA Request, not the entirety of the nine-subparts. Indeed, ICE cited to the entire FOIA request itself. In any event this fact is not dispositive to the Court's resolution of the pending motions.</p>		
2	<p>ICE received the FOIA Request on May 2, 2022.</p> <p><i>Evidence:</i> Declaration of Fernando Pineiro, ¶ 4</p>	<p>2. Disputed. Plaintiff sent this request by email on April 29, 2022.</p>

		<i>Evidence:</i> ECF No. 24-1 (Email from Michael Kaufman), 14.
2.	<p>Moving Party's Response</p> <p>Plaintiff does not dispute this fact, which identifies the date ICE received the FOIA request, not the date Plaintiff submitted it.</p> <p><i>See</i> L.R. 56-4 (“...the Court may assume that the material facts as claimed and adequately supported by the moving party are admitted to exist without controversy except to the extent that such material facts are (a) included in the Statement of Genuine Disputes and (b) <i>controverted by declaration or other written evidence</i> filed in opposition to the motion.”) (emphasis added).</p> <p>In any event this fact is not dispositive to the Court’s resolution of the pending motions.</p>	
3	<p>On May 16, 2022, the ICE FOIA Office sent Plaintiff a letter acknowledging receipt of the FOIA request. It was assigned tracking number 2022-ICFO-16321.</p> <p><i>Evidence:</i> Declaration of Fernando Pineiro, ¶ 5</p>	3. Undisputed but immaterial.
4	<p>When the ICE FOIA Office receives a FOIA request, the intake staff evaluates it to determine if it is a proper FOIA request per DHS FOIA regulation 6 C.F.R. § 5.3. Generally, a FOIA request is considered proper and in compliance with DHS regulations if it reasonably describes the records sought and the records are under the purview of ICE.</p> <p><i>Evidence:</i> Declaration of Fernando Pineiro, ¶ 9</p>	4. Undisputed but immaterial.
5	<p>Proper FOIA requests are entered into a database known as Secure Release and assigned a case tracking number. Based upon the requestor’s</p>	5. Undisputed but immaterial.

1	description of the records being sought and ICE	
2	FOIA's knowledge of the various program offices'	
3	missions, the ICE FOIA Office identifies the	
4	program office(s) likely to possess responsive	
5	records and tasks the appropriate program	
6	office(s) to conduct the necessary searches.	
7	<i>Evidence:</i> Declaration of Fernando Pineiro, ¶ 10	
8	6 ICE records are maintained by leadership offices	6. Undisputed but
9	and/or within ICE directorates, including but not	immaterial.
10	limited to, the Office of Public Affairs (OPA), the	
11	Office of Enforcement and Removal Operations	
12	(ERO), the Office of Professional Responsibility	
13	(OPR) and the ICE FOIA Office. The program	
14	offices are typically staffed with a designated	
15	point of contact (POC) who is the primary person	
16	responsible for communications between that	
17	program office and the ICE FOIA Office. Each	
18	POC is a person with detailed knowledge about	
19	the operations of his/her respective program	
20	office.	
21	<i>Evidence:</i> Declaration of Fernando Pineiro, ¶ 11	
22	7 Upon receipt of a proper FOIA request, the ICE	7. Plaintiff understands this
23	FOIA Office will identify which program offices,	fact to set out the process by
24	based upon their experience and knowledge of	which ICE intends to
25	ICE's program offices, within ICE are reasonably	respond to FOIA requests
26	likely to possess records responsive to that	and not to state that ICE has
27	request, if any, and task the relevant program	carried out this process
28	offices with searches.	accurately in this case. On
	<i>Evidence:</i> Declaration of Fernando Pineiro, ¶ 12	that understanding,
		undisputed but immaterial.
	8 Once the ICE FOIA Office determines the	8. Plaintiff understands this
	appropriate program offices for a given request, it	fact to set out the process by
	provides the POCs within each of those program	which ICE intends to
	offices with a copy of the FOIA request and	respond to FOIA requests
	instructs them to conduct a search for responsive	and not to state that ICE has
	records. The POCs then review the FOIA request,	carried out this process
	along with any case-specific instructions that may	accurately in this case. On

1		have been provided and, based on their experience and knowledge of their program office practices and activities, forward the request and instructions to the individual employee(s) or component office(s) within the program office that they believe are reasonably likely to have responsive records, if any.	that understanding, undisputed but immaterial.
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6		<i>Evidence:</i> Declaration of Fernando Pineiro, ¶ 12	
7	9	In conformity with the ICE FOIA Office's instructions, the individuals and component offices are directed to conduct searches of their file systems, including both paper files and electronic files, which in their judgment, based on their knowledge of the manner in which they routinely keep records, would most likely be the files to contain responsive documents.	9. Plaintiff understands this fact to set out the process by which ICE intends to respond to FOIA requests and not to state that ICE has carried out this process accurately in this case. On that understanding, undisputed but immaterial.
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13		<i>Evidence:</i> Declaration of Fernando Pineiro, ¶ 12	
14	10	Once those searches are completed, the individuals and component offices provide any potentially responsive records to their program office's POC, who in turn, provides the records to the ICE FOIA Office. The ICE FOIA Office then reviews the collected records for responsiveness and the application of appropriate FOIA Exemptions.	10. Plaintiff understands this fact to set out the process by which ICE intends to respond to FOIA requests and not to state that ICE has carried out this process accurately in this case. On that understanding, undisputed but immaterial.
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20		<i>Evidence:</i> Declaration of Fernando Pineiro, ¶ 12	
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24	11	ICE employees maintain records in several ways. ICE program offices use various systems to maintain records, such as investigative files, records regarding the operation of ICE programs, and administrative records.	11. Undisputed but immaterial.
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1		<i>Evidence: Declaration of Fernando Pineiro, ¶ 13</i>	
2	12	ICE employees may store electronic records on their individual computer hard drives or their program office's shared drive (if the office uses one).	12. Undisputed but immaterial.
3		<i>Evidence: Declaration of Fernando Pineiro, ¶ 13</i>	
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6	13	The determination of whether or not these electronic locations must be searched in response to a particular FOIA tasking, as well as how to conduct any necessary searches, is necessarily based on the manner in which the employee maintains his/her files.	13. Undisputed but immaterial.
7		<i>Evidence: Declaration of Fernando Pineiro, ¶ 13</i>	
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11	14	Additionally, all ICE employees have access to e-mail. ICE uses the Microsoft Outlook e-mail system. Each ICE employee stores his/her files in the way that works best for that particular employee. ICE employees use various methods to store their Microsoft Outlook e-mail files - some archive their files monthly, without separating by subject; others archive their e-mail by topic or by program; still others may create PST files of their emails and store them on their hard drive or shared drive.	14. Undisputed but immaterial.
12		<i>Evidence: Declaration of Fernando Pineiro, ¶ 14</i>	
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19			
20	15	Each ICE employee stores his/her files in the way that works best for that particular employee. ICE employees use various methods to store their Microsoft Outlook e-mail files - some archive their files monthly, without separating by subject; others archive their e-mail by topic or by program; still others may create PST files of their emails and store them on their hard drive or shared drive.	15. Undisputed but immaterial.
21		<i>Evidence: Declaration of Fernando Pineiro, ¶ 14</i>	
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27	16	Records received by the ICE FOIA Office from the program office POCs are assigned to a FOIA processor who determines whether or not the	16. Plaintiff understands this fact to set out the process by which ICE
28			

1	records are responsive to the FOIA request. If the	intends to respond to FOIA
2	records are responsive, the FOIA processor will	requests and not to state that
3	redact information pursuant to the FOIA or	ICE has carried out this
4	Privacy Act, as appropriate, while simultaneously	process accurately in this
5	ensuring that all reasonably segregated non-	case. On that understanding,
6	exempt information is released.	undisputed but immaterial.
7	<i>Evidence:</i> Declaration of Fernando Pineiro, ¶ 15	
8	17 Frequently, the ICE FOIA Office must coordinate	17. Plaintiff understands
9	between multiple program offices to ensure the	this fact to set out the
10	program office records are properly redacted and	process by which ICE
11	information is correctly segregated.	intends to respond to FOIA
12	<i>Evidence:</i> Declaration of Fernando Pineiro, ¶ 16	requests and not to state that
13		ICE has carried out this
14	18 Once the ICE FOIA Office completes its	process accurately in this
15	coordination efforts and all responsive records	case. On that understanding,
16	have been processed, the ICE FOIA Office	undisputed but immaterial.
17	releases the responsive records to the requestor.	
18	<i>Evidence:</i> Declaration of Fernando Pineiro, ¶ 16	
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20		
21	19 After reviewing the Request, and based on the	19. Undisputed but
22	information sought in the Request, the experience	immaterial.
23	and knowledge of ICE's practices and activities	
24	and discussions with the Plaintiff, the ICE FOIA	
25	Office determined that because of the subject	
26	matter of the Request, OPR, various	
27	subcomponents of ERO, the Office of Regulatory	
28	Affairs and Policy (ORAP), and Homeland	
	Security Investigations Joint Intelligence	
	Operations Center (JIOC) were the program	
	offices likely to have responsive records (if such	

1	records existed).	
2	<i>Evidence:</i> Declaration of Fernando Pineiro, ¶ 18	
3	19. Moving Party's Response	
4	This fact is material to the Court's determination of whether ICE has met its burden	
5	under the FOIA with respect to the sufficiency of its search for records responsive to	
6	Plaintiff's FOIA Request. The above fact demonstrates that ICE conferred with	
7	Plaintiff directly, on multiple occasions, over the locations to be searched and search	
8	terms used.	
9	Plaintiff offers no evidence to rebut this. <i>See</i> L.R. 56-4 ("...the Court may assume that	
10	the material facts as claimed and adequately supported by the moving party are	
11	admitted to exist without controversy except to the extent that such material facts are	
12	(a) included in the Statement of Genuine Disputes and (b) <i>controverted by declaration</i>	
13	<i>or other written evidence</i> filed in opposition to the motion.") (emphasis added).	
14	20 The ICE FOIA Office also agreed to search the	20. Undisputed but
15	emails of former ICE Directors at Plaintiff's	immaterial.
16	request.	
17	<i>Evidence:</i> Declaration of Fernando Pineiro, ¶ 18	
18	20. Moving Party's Response	
19	This fact is material to the Court's determination of whether ICE has met its burden	
20	under the FOIA with respect to the sufficiency of its search for records responsive to	
21	Plaintiff's FOIA Request. The above fact demonstrates that ICE conferred with	
22	Plaintiff directly, on multiple occasions, over the locations to be searched and search	
23	terms used.	
24	Plaintiff offers no evidence to rebut this. <i>See</i> L.R. 56-4 ("...the Court may assume that	
25	the material facts as claimed and adequately supported by the moving party are	
26	admitted to exist without controversy except to the extent that such material facts are	
27	(a) included in the Statement of Genuine Disputes and (b) <i>controverted by declaration</i>	
28	<i>or other written evidence</i> filed in opposition to the motion.") (emphasis added).	
	21 Based on their subject matter expertise and	21. Disputed. The ICE
	knowledge of the agency record systems, the ICE	FOIA Office did not instruct
	FOIA Office instructed these program offices to	these program offices to
	conduct a comprehensive search for records and to	construct a comprehensive
	provide all potentially responsive records located	search. To the contrary, the

during that search to the ICE FOIA Office for review and processing.

Evidence: Declaration of Fernando Pineiro, ¶ 18

ICE FOIA Office's instructions to these program offices contained various flaws detailed in Plaintiff's summary judgment briefing. Plaintiff sets out several examples below:

For Parts One through Three, ICE produced an email chain showing that Adelanto ICE officials agreed to prepare a death notification for Martin Vargas Arellano. ECF No. 112-4, 177. The people involved in this email chain are redacted in the produced version, but ICE is aware who was on this chain. ICE admits it has not searched all of the custodians on this chain, including the ICE headquarters staff, who likely would have been copied on missing records, including follow-up correspondence showing the referenced death notification or any discussion of why it was not completed. Additionally, CRCL has produced an email to unidentified "ICE Colleagues" explaining that CRCL was preparing a "formal expert recommendations memo" regarding Mr. Arellano's death. ECF No. 112-4, 208.

1 ICE did not produce this
2 expert recommendations
3 memo, suggesting that it did
4 not appropriately search the
5 unidentified ICE employees
6 on the email, or other
7 locations where it likely
8 could be found.

9 Both of these failures are
10 indicative of a failure to
11 instruct program offices to
12 comprehensively search.

13 For Part Five, Plaintiffs
14 have identified that ICE
15 keeps an “SDI list” that
16 includes cases of detainees
17 where there is “significant
18 coordination required to
19 repatriate *or to release* a
20 detainee/resident in the
21 United States due to their
22 medical condition,” and that
23 ICE holds regular “SDI
24 meeting[s]” about these
25 people. ECF No. 112-4, 125
26 (emphasis added). Records
27 regarding the SDI list and
28 meetings are responsive, but
ICE has conducted no
search at all for these
records. *See* Pineiro Decl. ¶
47.

For Parts Six and Seven,
ICE’s FOIA Office
undisputedly determined
that JIOC was “likely to
have responsive records (if
such records existed).”

Def’s SUMF ¶ 19. Statements by DHS confirm that JIOC has responsive “significant event reports.” DHS, Privacy Impact Assessment for the Significant Event Notification (SEN) System 3 n.4, Oct. 15, <https://www.dhs.gov/sites/default/files/publications/privacy-pia-ice023a-sen-october2021.pdf> [<https://perma.cc/7EEE-A6JW>]. ICE has conducted no search at all of JIOC. *See* Pineiro Decl. ¶ 54.

For Part Eight, Plaintiff has provided concrete evidence indicating that ICE’s *Fraihat* records are, according to an ICE employee, “the only place” where ICE was capturing the COVID hospitalization data that would be responsive to Plaintiff’s request. ECF No. 112-4, 163 (Moon Dep. excerpts at 163:4-10); *see also* ICE, ERO COVID-19 Pandemic Response Requirements, at 9–14, 17 (Version 8.0, Apr. 2, 2022), <https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities-v8.pdf> [<https://perma.cc/3JDD-AQZ8>]. ICE has conducted

no search at all of these records. *See* Pineiro Decl. ¶ 74.

For Part Nine, even though the ICE FOIA Office identified nine custodians likely to have responsive information, it did not instruct them to do a comprehensive search. Instead, after a single attempt to run a search resulted in technical issues, the FOIA Office gave up on further searches. Pineiro Decl. ¶ 80. And even though the ICE FOIA Office identified “Sharepoint and eClinicalWorks” as locations likely to contain responsive information, it did not instruct ICE employees to do more than a single search for information about the four people Plaintiff identified in its FOIA request. Pineiro Decl. ¶¶ 76, 80, 81.

Evidence: Def’s SUMF ¶ 19; Pineiro Decl. ¶¶ 45, 54, 74, 76, 80, 86; ECF No. 112-4, 125, 163 (Moon Dep. excerpts at 163:4-10), 177, 208; DHS, Privacy Impact Assessment for the Significant Event Notification (SEN) System 3 n.4, Oct. 15, <https://www.dhs.gov/sites/default/files/publications/privacy-pia-ice023a->

		<p>senoctober2021.pdf [https://perma.cc/7EEE-A6JW]; ICE, ERO COVID-19 Pandemic Response Requirements, at 9–14, 17 (Version 8.0, Apr. 2, 2022), https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities-v8.pdf [https://perma.cc/3JDD-AQZ8].</p>
<p>21. Moving Party’s Response</p> <p>Plaintiff provides no facts or evidence, rather than argument, to dispute Uncontroverted Fact No. 21. <i>See</i> L.R. 56-4. Moreover, it overlooks that agency declarations are accorded “a presumption of good faith, which cannot be rebutted by ‘purely speculative claims about the existence and discoverability of other documents.’” <i>SafeCard</i>, 926 F.2d at 1200. Affidavits that describe what was searched and by whom are enough to establish an adequate search. <i>See Lawyers’ Comm.</i>, 534 F. Supp. 2d at 1131.</p>		
22	<p>All locations likely to contain records responsive to the Request (to the extent that they exist within ICE’s custody) were searched.</p> <p><i>Evidence:</i> Declaration of Fernando Pineiro, ¶ 18</p>	<p>Disputed. Several locations likely to contain records responsive to the Request were not searched at all.</p> <p>example, or Part Five, Plaintiffs have identified that ICE keeps an “SDI list” that includes cases of detainees where there is “significant coordination required to repatriate <i>or to release</i> a detainee/resident in the United States due to their medical condition,”</p>

and that ICE holds regular “SDI meeting[s]” about these people. ECF No. 112-4, 125 (emphasis added). Records regarding SDI meetings and list are responsive, but ICE has conducted no search at all for these records. *See* Pineiro Decl. ¶ 47. For Parts Six and Seven, ICE’s FOIA Office undisputedly determined that JIOC was “likely to have responsive records (if such records existed).” Def’s SUMF ¶ 19. Statements by DHS confirm that JIOC has responsive “significant event reports.” DHS, Privacy Impact Assessment for the Significant Event Notification (SEN) System 3 n.4, Oct. 15, <https://www.dhs.gov/sites/default/files/publications/privacy-pia-ice023a-senoctober2021.pdf> [https://perma.cc/7EEE-A6JW]. ICE has conducted no search at all of JIOC. *See* Pineiro Decl. ¶ 54. For Part Eight, Plaintiff has provided concrete evidence indicating that ICE’s *Fraihat* records are, according to an ICE employee, “the only place” where ICE was capturing the COVID hospitalization

data that would be responsive to Plaintiff's request. ECF No. 112-4, 163 (Moon Dep. excerpts at 163:4-10); *see also* ICE, ERO COVID-19 Pandemic Response Requirements, at 9–14, 17 (Version 8.0, Apr. 2, 2022), <https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities-v8.pdf> [<https://perma.cc/3JDD-AQZ8>]. ICE has conducted no search at all of these records. Pineiro Decl., ¶ 74. Additionally, there were several locations where ICE conducted a cursory search but did not search adequately. *See* Pl's Resp. to Def's SUMF ¶ 21. *Evidence:* Def's SUMF ¶ 19; Pineiro Decl., ¶¶ 45, 54, 74; ECF No. 112-4 at 125, 163 (Moon Dep. excerpts at 163:4-10); DHS, Privacy Impact Assessment for the Significant Event Notification (SEN) System 3 n.4, Oct. 15, <https://www.dhs.gov/sites/default/files/publications/privacy-pia-ice023a-senoctober2021.pdf> [<https://perma.cc/7EEE-A6JW>]; ICE, ERO COVID-19 Pandemic Response Requirements, at 9–14, 17 (Version 8.0, Apr. 2, 2022),

		https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities-v8.pdf [https://perma.cc/3JDD-AQZ8] .
22. Moving Party's Response Plaintiff provides no facts or evidence, rather than argument, to dispute Uncontroverted Fact No. 22. <i>See</i> L.R. 56-4. Moreover, it overlooks that agency declarations are accorded "a presumption of good faith, which cannot be rebutted by 'purely speculative claims about the existence and discoverability of other documents.'" <i>SafeCard</i> , 926 F.2d at 1200. Affidavits that describe what was searched and by whom are enough to establish an adequate search. <i>See Lawyers' Comm.</i> , 534 F. Supp. 2d at 1131.		
23	Based on ICE's searches, a total of 53,426 pages of potentially responsive records were located, along with 911 pages of records referred to ICE from other departments. <i>Evidence:</i> Declaration of Fernando Pineiro, ¶ 82	23. Undisputed but immaterial.
24	Of those 53,426 pages, 21,153 pages and an Excel spreadsheet were determined to be responsive and produced to the Plaintiff. <i>Evidence:</i> Declaration of Fernando Pineiro, ¶ 82	24. Undisputed but immaterial.

Dated: April 23, 2025

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